

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

DUNCAN CLARK GIMPEL, JR.
TX-1326989-G

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DOCKETED COMPLAINT NO.
13-330

AGREED FINAL ORDER

On the 9 day of May, 2014, the Texas Appraiser Licensing and Certification Board, (the "Board"), considered the matter of the certification of Duncan Clark Gimpel, Jr. (the "Respondent").

In order to conclude this matter, Respondent neither admits nor denies the truth of the Findings of Fact and Conclusions of Law contained herein and further agrees to the disciplinary action set out in this Agreed Final Order (the "Agreed Final Order"). The Board makes the following findings of fact and conclusions of law and enters this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

FINDINGS OF FACT

1. Respondent is a Texas state certified general real estate appraiser who holds certification TX-1326989-G and was certified by the Board during all times material to the above-noted complaint.
2. Respondent appraised residential real property located at: 1211 Maple Lane, Jasper, Texas 75951 (the "Property").
3. Thereafter, a complaint was filed with the Board by Wayne S. Kirkpatrick, the owner of the Property. The Board investigated the complaint to ensure compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), TEX. OCC. CODE CHPT. 1103 (the "Act") and 22 TEX. ADMIN. CODE CHPT. 153 and 155 (the "Rules").
4. The Board, in accordance with the mandate of TEX. GOV'T CODE ANN. CHPT. 2001, the Administrative Procedure Act (the "APA"), and the Act, notified Respondent of the nature of the accusations involved. Respondent was afforded an opportunity to respond to the accusations in the complaint and was also requested to provide certain documentation to the Board. Thereafter, the Respondent provided the requested documentation.
5. Respondent violated TEX. OCC. CODE § 1103.405, 22 TEX. ADMIN. CODE §§ 153.20(a)(6) and 155.1(a) by the following acts or omissions which did not conform to USPAP in effect at the time of the appraisal report for the Property:
 - a) USPAP Ethics Rule – Respondent violated the Ethics Rule by signing a certification indicating that he had personally inspected the subject property when he had not;

- b) USPAP Record Keeping Rule -- Respondent failed to maintain a work file containing the documentation necessary to support of his analyses, opinions and conclusions;
- c) USPAP Competency Rule -- Respondent failed to complete the appraisal report in a competent manner;
- d) USPAP Scope of Work Rule 1-2(h) & Standard 2-2(vii) -- Respondent failed to perform the scope of work necessary to develop credible assignment results;
- e) USPAP Standards 1-2(e)(i) & 2-2(b)(iii) -- Respondent failed to identify and report adequately the site and improvements description, including reporting and analyzing any functional or external obsolescence associated with the Property;
- f) USPAP Standards 1-3(a) & 2-2(vii); 1-3(b) & 2-2(ix) -- Respondent did not identify and analyze the effect on use and value of existing land use regulations, economic supply and demand, and market area trends. Respondent also did not provide supportive reasoning for his determination of the Property's highest and best use;
- g) USPAP Standards 1-4(b)(i) & 2-2(vii); 1-4(b)(ii) & 2-2(viii); 1-4(b)(iii) & 2-2(viii); 1-4(a) & 1-4(b) -- Respondent did not use an appropriate method or technique to develop an opinion of the site value, and no evidence is included in the report. Respondent also Respondent failed to collect, verify, analyze, and reconcile the cost new of improvements and provide supporting rationale for any such determinations and he also failed to collect, verify, analyze, or reconcile accrued depreciations related to functional and external obsolescence associated with the Property. Generally, Respondent failed to employ recognized methods and techniques correctly in the Cost Approach;
- h) USPAP Standards 1-4(a) & 2-2(vii); 1-1(a) & 1-4(a) -- Respondent failed to adequately collect, verify, analyze and reconcile comparable sales data and did not employ recognized methods and techniques correctly in the Sales Comparison Approach;
- i) USPAP Standards 1-6(a),(b) & 2-2(vii) -- Respondent failed to reconcile the quality and quantity of the data within the approaches used, as well as the applicability and suitability of the approaches; and,
- j) USPAP Standards 1-1(a), 1-1(b), 1-1(c), and, 2-1(a) -- For the reasons detailed above, Respondent produced an appraisal report for the Property that contained several substantial errors of omission or commission by not employing correct methods and techniques.
6. Respondent made material misrepresentations and omissions of material fact in his appraisal of the Property as detailed above.
7. The parties enter into this Agreed Final Order in accordance with TEX. OCC. CODE § 1103.458.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter pursuant to the Texas Appraiser Licensing and Certification Act, TEX. OCC. CODE § 1103.
2. Respondent violated the above-noted provisions of USPAP as prohibited by TEX. OCC. CODE § 1103.405 and 22 TEX. ADMIN. CODE §§ 155.1 and 153.20(a)(6).
3. Respondent violated 22 TEX. ADMIN. CODE § 153.20(12) by making material misrepresentations and material omissions of material fact.
4. The parties are authorized to resolve their dispute by means of a consent order in accordance with TEX. OCC. CODE § 1103.458.

ORDER

Based on the above findings of fact and conclusions of law, the Board ORDERS that Respondent's Texas appraiser certification (TX-1326989-G) be suspended, effective 5:00 p.m. (CST) on May 9th, 2014 and ending at 5:00 p.m. (CST) on May 8th, 2015. IT IS FURTHER ORDERED that beginning at 5:00 p.m. (CST) on May 9th, 2014, the suspension is to be fully probated for 12 months, ending 5:00 p.m. (CST) on May 8th, 2015, subject to the following terms and conditions:

1. **EDUCATION.** On or before February 8th, 2015, Respondent shall submit documentation of attendance and successful completion of the classes set out below to the Board. All classes required by this Agreed Final Order must be classes approved by the Board. Unless otherwise noted below, all classes must require in-class attendance. If the class requires an exam, Respondent must receive a passing grade on the exam. None of the required class hours will count toward Respondent's continuing education requirements for certification. Respondent is solely responsible for locating and scheduling classes to timely satisfy this Agreed Final Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion of the course in the event of course cancellation or rescheduling by the course provider.
 - a. A minimum fifteen (15) classroom hour course in USPAP;
2. **MENTORSHIP.** On or before November 8th, 2014, Respondent shall complete eight (8) hours of in-person mentorship conducted by a certified USPAP instructor approved by the Board in accordance with the schedule and topics set out below. Respondent shall submit a certification of completion signed by the approved certified USPAP instructor and a signed copy of the Guidelines for Texas Appraiser Licensing and Certification Board Mentors and Mentees on or before the due date listed for each mentorship requirement. Respondent is solely responsible for locating and scheduling an approved mentor to timely satisfy this Agreed Final Order and is urged to do so well in advance of any compliance deadline to ensure adequate time for completion.

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- a. 4 hours of mentorship in sales comparison approach; and,
 - b. 4 hours in reporting and analyzing depreciation and obsolescence.
3. **ADMINISTRATIVE PENALTY.** On or before May 29th, 2014. Respondent shall pay to the Board an administrative penalty of five hundred dollars (\$500.00), by certified funds.
4. **TRAINEES.** Respondent shall not sponsor any new appraiser trainees during the entire twelve (12) month probation period.
5. Respondent shall fully and timely comply with all of the provisions of this Agreed Final Order; and
6. Respondent shall comply with all provisions of the Act, the Rules of the Board, and USPAP in the future or be subjected to further disciplinary action.

ACKNOWLEDGMENT AND WAIVER

RESPONDENT'S FAILURE TO TIMELY COMPLY WITH ANY TERM IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE SHALL RESULT IN THE AUTOMATIC REVOCATION OF PROBATION AND THE SUSPENSION IMPOSED IN THIS AGREED FINAL ORDER SHALL BE EFFECTIVE FOR THE FULL TERM COMMENCING ON THE EFFECTIVE DATE OF THE REVOCATION OF PROBATION. IF RESPONDENT FAILS TO TIMELY COMPLY WITH ANY TERMS IN THIS AGREED FINAL ORDER, WHICH HAS A SPECIFIC, STATED DUE DATE, THE RESPONDENT SHALL ALSO BE IMMEDIATELY ASSESSED A \$1,000 ADMINISTRATIVE PENALTY.

ANY SUCH SUSPENSION SHALL BE EFFECTIVE WITHOUT THE NEED FOR A HEARING OR OTHER ADMINISTRATIVE DUE PROCESS UNDER THE ACT OR THE APA, AND RESPONDENT SPECIFICALLY WAIVES ANY SUCH HEARING OR DUE PROCESS.

RESPONDENT, BY SIGNING THIS AGREED FINAL ORDER, WAIVES THE RESPONDENT'S RIGHT TO A FORMAL HEARING, ANY MOTION FOR REHEARING, AND ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER. Information about this Agreed Final Order is subject to public information requests and notice of this Agreed Final Order will be published on the Board's website.

I HAVE READ AND REVIEWED THIS ENTIRE AGREED FINAL ORDER FULLY AND AM ENTERING INTO IT OF MY OWN FREE WILL TO AVOID THE EXPENSE OF LITIGATION AND TO REACH AN EXPEDITIOUS RESOLUTION OF THE MATTER. I NEITHER ADMIT NOR DENY THAT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW CONTAINED HEREIN ARE CORRECT. I UNDERSTAND ALL OF MY COMPLIANCE OBLIGATIONS UNDER THIS AGREED FINAL ORDER AND THE CONSEQUENCES FOR FAILING TO COMPLY WITH THOSE OBLIGATIONS.

I UNDERSTAND THAT THE BOARD AND ITS STAFF CANNOT PROVIDE ME WITH LEGAL ADVICE AND I AM AWARE OF MY RIGHT TO BE REPRESENTED BY AN ATTORNEY OF MY OWN CHOOSING. I AM AWARE OF MY RIGHT TO A HEARING, AND HEREBY WAIVE A HEARING AND ALSO WAIVE ANY RIGHT TO SEEK JUDICIAL REVIEW OF THIS AGREED FINAL ORDER, INCLUDING FOR ANY SUBSEQUENT ACTION RESULTING FROM MY FAILURE TO TIMELY COMPLY WITH AN ADMINISTRATIVE REQUIREMENT OF THIS AGREED FINAL ORDER (E.G. PAYMENT OF A PENALTY, COMPLETION OF REMEDIAL EDUCATION, OR FAILURE TO PROVIDE LOGS).

DELIVERY OF DOCUMENTS AND PAYMENTS FOR COMPLIANCE

Respondent is solely responsible for timely delivery to the Board of all documents and payments necessary for compliance of this Agreed Final Order. Payment of any administrative penalties due must be in the form of a cashier's check or money order made payable to the Texas Appraiser Licensing and Certification Board. Respondent shall retain documentation (reply email, fax confirmation, return receipt, etc.) confirming receipt by the board of all the necessary documents.

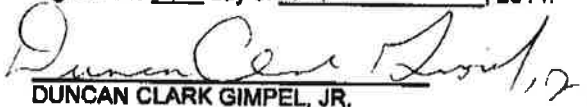
Respondent shall send all documents and payments necessary for compliance by: (1) email to compliance.talcb@talcb.texas.gov, (2) fax to (512) 936-3966, attn: Compliance, or (3) certified mail return receipt requested to Standards & Enforcement Services, Texas Appraiser Licensing & Certification Board, Stephen F. Austin Building, 1700 N. Congress Ave., Suite 400, Austin, TX 78701.

EXECUTION

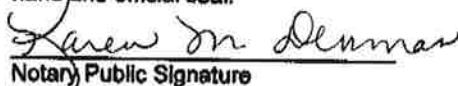
This agreement may be executed in one or more counterparts, in form of electronic mail, facsimile, or other written expression of agreement, each of which shall be deemed an original and together shall comprise evidence of full execution of the agreement.

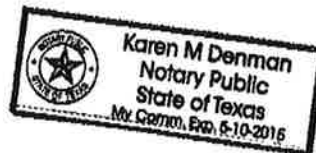
THE DATE OF THIS AGREED FINAL ORDER shall be the date it is executed by the Chairperson of the Texas Appraiser Licensing and Certification Board. The Chairperson has been delegated the authority to sign this Agreed Final Order by the Texas Appraiser Licensing and Certification Board vote.

Signed this 16 day of APRIL, 2014.


DUNCAN CLARK GIMPEL, JR.

SWORN TO AND SUBSCRIBED BEFORE ME, the undersigned, on this 16 day of April, 2014, by DUNCAN CLARK GIMPEL, JR., to certify which, witness my hand and official seal.


Notary Public Signature



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Notary Public's Printed Name

Signed by the Standards and Enforcement Services Division this 21st day of April, 2014.

Troy Beaulieu

Troy Beaulieu, Staff Attorney
Texas Appraiser Licensing and Certification Board

Signed by the Commissioner this 9 day of May, 2014.

Douglas Oldmixon
Douglas Oldmixon, Commissioner
Texas Appraiser Licensing and Certification Board

Approved by the Board and Signed this 9 day of May, 2014.

Jamie S. Wickliffe
Jamie S. Wickliffe, Chairperson
Texas Appraiser Licensing and Certification Board